



POLICE DEPARTMENT
NEW YORK, N.Y. 10038
DEPUTY COMMISSIONER-TRIALS

October 27, 2016

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In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Police Officer Elisha Duncan : ORDER
Tax Registry No. 926793 : OF
Manhattan Court Section : DISMISSAL
-----X

Police Officer Elisha Duncan, Tax Registry No. 926793, Shield No. 03073, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2015-13903, as set forth on form P.D. 468-121, dated April 14, 2016, and after a review of the entire record, having pleaded Guilty, is found Guilty as charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Elisha Duncan from the Police Service of the City of New York.


JAMES P. O'NEILL
POLICE COMMISSIONER

EFFECTIVE: 0001 hrs. January 3, 2017



POLICE DEPARTMENT

NEW YORK, N.Y. 10038

DEPUTY COMMISSIONER-TRIALS

-----X
In the Matter of the Charges and Specifications : Case No.

- against - : 2015-13903

Police Officer Elisha Duncan :

Tax Registry No. 926793 :

Manhattan Court Section :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCE:

For the Department: Penny Bluford-Garrett, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street - Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

Charges and Specifications:

1. Said Police Officer Elisha Duncan, while assigned to the 46th precinct, on or about and between May 1, 2014 and November 6, 2014, engaged in conduct prejudicial to the good order and efficiency of the Department, to wit: said officer misappropriated, \$44,960.00 in United States currency when he collected said money from approximately seventy (70) individuals known to the Department for a football trip in Seattle, Washington and did thereafter admit to gambling all of said money.
P.G. 203-10, Page 1, Paragraph 5 - CONDUCT PREJUDICIAL
2. Said Police Officer Elisha Duncan, while assigned to the 46th precinct, on or about November 6, 2014 and November 7, 2014, did fail to report for his tours of duty.
P.G. 205-18, Pages 1 & 2 -ABSENT WITHOUT LEAVE-PERSONNEL MATTERS
3. Said Police Officer Elisha Duncan, while assigned to Manhattan Court Section, on or about December 1, 2015, engaged in conduct prejudicial to the good order and efficiency of the Department, to wit, said officer was observed operating his personal vehicle with a registration that expired on October 13, 2015.
P.G. 203-10, Page 1, Paragraph 5 - CONDUCT PREJUDICIAL

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 19, 2016. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. Respondent also called Lieutenant Michael Corbett as a witness. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Beginning around May 2014, Respondent began collecting money from people interested in a group trip out west to see a football game between the Giants and Seahawks in Seattle. Respondent collected \$600 per person, which would cover airfare,

hotel room, and a ticket to the game to be played in November. Respondent charged just enough to cover the cost of the trip, and did not add an extra amount for profit. He had been arranging such trips for the past seven or eight years, all without incident. (Tr. 17-19)

Over the next few months, Respondent collected money from about 70 people, totaling approximately \$44,960. Respondent's recollection was that the majority of participants were members of the service, while the remainder were non-NYPD civilians. Rather than create a separate account for this purpose, Respondent placed the money he collected either into his existing personal account or on a credit card, "just some form to pay for the trip." (Tr. 20-21, 28-29, 34, 47)

At some point before October, Respondent reserved a block of rooms at a Seattle Marriott, and he also reserved a block of airline tickets for the trip. He never purchased the game tickets. Respondent testified that he was not required to pay the money for the hotel or flight right away. (Tr. 36-44)

When the time came to make the payments to the hotel and airline, Respondent no longer had the money. Respondent testified that he began gambling away the money after he collected it, and tried to win it back in the first few days of November, 2014. His plan to recoup the money went awry, however, as he had a bad losing streak playing mostly video poker at Empire Casino in Yonkers. By the end of the day on November 5, Respondent had lost all the money he had collected, and was so ashamed and scared that he didn't show up at work for his regular tours on November 6 and 7, 2014. (Tr. 21-23, 47-49, 56) After police located Respondent [REDACTED] he confessed to them exactly

what he had done. (Tr. 24) At trial, he also admitted that in December, 2015, he operated his vehicle with an expired registration. (Tr. 32, 55)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respondent spoke with almost all of the officers from whom he collected money; most were disappointed and wanted their money back, but none of them said they wanted him to lose his job or get arrested. (Tr. 25-26) Eventually Respondent started paying back from his paycheck some of the money he collected. According to the records compiled by Lieutenant Corbett, formerly assigned to IAB, Respondent had paid back a total of approximately \$8,800 to 15 people by July, 2016. (Tr. 65, 70) Respondent provided an updated figure at trial, testifying that he had now paid back a total of approximately \$12,000 to about 20 people, leaving more than \$32,000 still to be reimbursed. (Tr. 26-27, 50)

Lieutenant Corbett also submitted a list of the 70 victims in this case (Dept. Ex. 2). According to the lieutenant, the actual breakdown of the 70 individuals who paid money to Respondent was 38 civilians, and 32 members of the service. (Tr. 64-65) The lieutenant interviewed the 32 members of the service involved, as well as a number of the

civilians, and testified that none of them expressed a desire to pursue criminal charges against Respondent. (Tr. 62, 71)

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on September 29, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate asks that Respondent be dismissed from the Department, and submits several cases in support of its position. Although there were some similarities between those cases and the present one, none of them are a direct match, since the earlier cases did not involve the same type of misappropriation that was present here. Perhaps the most similar is *Disciplinary Case No. 81907/06* (Aug. 3, 2006), where an eight-year member of the service with one prior adjudication was dismissed from the Department for stealing over \$3,000 from the checking account of the precinct club of which he was president, and other related misconduct. In the companion case, *Disciplinary Case No. 81906/06* (May 17, 2007), the vice president of the club also was dismissed from the Department.

Here, Respondent collected money from people for one purpose, and then used it in a completely different way, gambling the entire amount away at a casino. The number of victims involved, 70, and the amount of money misappropriated, \$44,960, make this a significant breach of trust. Aside from the civilians who were victimized, 32 members of the service were affected by Respondent's actions. Further, although the misconduct here might be considered to have been off-duty in its inception, Respondent's actions

adversely impacted his on-duty responsibilities as well; indeed, one direct consequence of Respondent's conduct was that he failed to appear for duty on two consecutive days.

Counsel for Respondent raises several points in favor of mitigation. The victims, while upset, appeared to be somewhat sympathetic to Respondent's situation; for instance, they apparently were unanimous in not wanting Respondent to be criminally prosecuted. Respondent has paid back about 20 of these 70 victims, a total of approximately \$12,000. While it is encouraging that Respondent has made some efforts to redress the wrong done to these people, almost two years have passed since this incident and more than \$32,000 of the \$44,960 has not been returned.

[illegible][illegible]

[REDACTED]

[REDACTED]

Here, too, the question is whether Respondent can be relied upon to remain a trusted member of the service, to maintain the high level of integrity emphasized in the Department's mission statement. [REDACTED]

[REDACTED]

[REDACTED] Indeed, as part of the job, police officers often have access to, and are involved in the handling of, money and other valuables. Respondent can no longer be trusted to handle such money and valuables appropriately. With his words and deeds, Respondent has not demonstrated enough reliability to justify a lesser penalty, such as dismissal probation. Under the totality of circumstances, including the large amount of money misappropriated from 70 people, the manner in which that money was gambled away, and how events spiraled out of control for Respondent to the point where he was absent from work for two consecutive days, Respondent cannot be relied upon to continue as an officer with the Department. Accordingly, I recommend that Respondent be DISMISSED from his employment with the New York City Police Department.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

JAN 03 2017



JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ELISHA DUNCAN
TAX REGISTRY NO. 926793
DISCIPLINARY CASE NO. 2015-13903

Respondent was appointed to the Department on September 29, 2000. His last three annual performance evaluations were as follows: in 2012, he received an overall rating of 4.5 "Extremely Competent/Highly Competent," in 2013, he received an overall rating of 4.0 "Highly Competent," and in 2015, he received an overall rating of 3.5 "Highly Competent/Competent." He has been awarded five medals for Excellent Police Duty. [REDACTED]

Respondent was placed on modified assignment on November 7, 2014, in connection with the instant case; that duty status remains ongoing. Respondent has no prior disciplinary history, though he does have a monitoring history. From May 5, 2005, to May 4, 2006, Respondent was on Level 1 Force Monitoring. From October 19, 2009, to June 29, 2011, Respondent was on Level 2 Force Monitoring for having three or more CCRB complaints in one year. On November 21, 2013, Respondent was again placed on Level 2 Force Monitoring for having three or more CCRB complaints in one year. That monitoring remains ongoing.

Jeff S. Adler
Assistant Deputy Commissioner Trials